

REMARKS

Claims 1-19, 21 and 27-32 are canceled without prejudice to resubmission. Claims 20, 22-26 and 33-34 are amended. The amendments presented in this response are the same amendments which were proposed to the Examiner on December 18, 2009 for consideration in a telephone interview. Agreement was reached that these claims overcame all of the outstanding rejections under 35 U.S.C. §§ 112, 102(b) and 103(a). Favorable consideration based on these claims is requested.

In the Office Action dated January 11, 2010, claims 20-34 of the present application were rejected as claiming the same invention (statutory double patenting) as in copending U.S. Patent application no. 12/272,261. This rejection is traversed and reconsideration is requested for the reasons which follow.

A rejection for same invention double patenting requires that the claims of both applications be identical in scope. "Same invention" means identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1984); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957). The present claims, as amended, are not identical in scope with the currently pending claims of copending U.S. Patent application no. 12/272,261 and thus this rejection should be withdrawn.

Also, MPEP 804 provides that, "If a "provisional" statutory double patenting rejection is the only rejection remaining in one of the applications (but not both), the examiner should withdraw the rejection in that application and permit that application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application into a double patenting rejection when the application issues as a patent." Thus, even if the same invention (statutory) double patenting rejection were correct, it should still be withdrawn in the present application for this additional reason. Accordingly, withdrawal of the statutory double patenting rejection is requested.

A terminal disclaimer has been filed concurrently herewith in copending U.S. Patent application no. 12/272,261. The filing of this terminal disclaimer overcomes a potential provisional obviousness-type double patenting rejection in the present application.

Accordingly, in view of the amendments and the filing of the terminal disclaimer in copending U.S. Patent application no. 12/272,261, it is considered that the present application is in condition for immediate allowance. Favorable consideration and issuance of a notice of allowance is requested.

Respectfully submitted,

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